IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2252 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHUNILAL PURSHOTTAMBHAI PATEL

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 2252 of 1996

MR HARIT N SOMPURA for Petitioner No. 1

Mr. PD Bhate, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner has challenged the legality and validity of the order dated 22.3.1993 issued by the respondent for recovery of the amount under Section 32-A of the Bombay Stamp Act, 1958 ["the Act" for

short].

2. The petitioner had purchased the property in question by registered sale deed dated 17.4.1989 bearing Registration No. 4781 and the same was presented before the Sub-Registrar, Surat on the same day,i.e. on 17.4.1989. The petitioner affixed stamp duty of Rs. 12,000/= considering the value of the property at Rs.1,20,000. The proceedings under Section 32-A of the Act came to be initiated by the respondent after a period of more than 2 years of registration of the document and on the basis of the same an order came to be passed by the respondent directing the petitioner to pay an amount of Rs. 39,060 being deficit stamp duty and Rs.250 + Rs. 500 towards penalty and fine in all Rs. 39,910. As the said amount was not paid, the respondent had issued a recovery notice dated 1.10.1992 and subsequently passed the impugned order dated 22.3.1993 for recovery of the aforesaid amount, and the same is challenged by the petitioner in the present petition.

3. Shri Harit N. Sompura, learned advocate appearing for the petitoner has relied upon the judgment of the Full Bench of this Court in the case of Gorva Vibhag Cooperative Housing Society VS. State of Gujarat, reported in 1992(1) GLR 654 and another judgment of the Full Bench of this Court in the case of Shailesh Jadhavji Varia Vs. Sub-Registrar, Vadodara, reported in 1983(7) GLR 783. Shri Sompura has also relied on the unreported judgment of the learned Single Judge of this Court dated 5.12.2001 in the case of Ambuja Metal Industries Pvt.Ltd. Vs. State of Gujarat, rendered in S.C.A. No. 654 of 2000, and the judgment and order dated 11.8.2003 passed in the case of Kumarpal Kundanmal Bafna Vs. State of Gujarat in S.C.A. No. 4434 of 2003 and submitted that the exercise of powers by the respondent after a period of more than 2 years is exercise of powers after an unreasonable period and the same is arbitrary and illegal and therefore he requested to quash and set aside the said order.

4. There is no affidavit-in-reply filed on behalf of the respondents justifying the delay in initiating proceedings under Section 32-A of the Act. Mr. Bhate, learned AGP is also not in a position to explain the delay in initiation of proceedings under Section 32-A of the Act. In view of the fact that the document came to be registered in 1989 and the proceedings came to be initiaated after a period of two years, it can be said to be an exercise of powers after unreasonable period and the same is arbitrary. This Court, in two unreported

judgments, i.e. in the case of Ambuja Metal Industries Ltd., (supra) and Kumarpal Kundanlal Bafna (supra) held that the impugned orders were required to be quashed and set aside and has been pleased to quash and set aside the impugned orders passed by the authority under the said Act on the ground that exercise of powers by the authority was after a period of seven years which is not justified and without justifying the delay, they could not have passed the order and has set aside the order passed by the authorities.

5. Considering the judgment and order passed by this Court in the aforesaid two cases and considering the fact that in the present case the powers were exercised after a period of 2 years, the impugned order dated 22.3.1993 requires to be quashed and set aside and the same is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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